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104TH CONGRESS }
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SENATE

{ REPORT
104-294

NATIONAL CHILDREN'S ISLAND ACT OF 1995

R E P O R T

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

H.R. 1508

TO REQUIRE THE TRANSFER OF TITLE TO THE DISTRICT OF COLUMBIA OF CERTAIN REAL PROPERTY IN ANACOSTIA PARK TO FACILITATE THE CONSTRUCTION OF NATIONAL CHILDREN'S ISLAND, A CULTURAL, EDUCATIONAL, AND FAMILY-ORIENTED PARK



JUNE 26, 1996.—Ordered to be printed

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Mr. STEVENS, from the Committee on Governmental Affairs,
submitted the following

REPORT

[To accompany H.R. 1508]

The Committee on Governmental Affairs, to which was referred the bill (H.R. 1508) to direct the transfer of title to the District of Columbia of certain real property in Anacostia Park to facilitate the development of National Children's Island, a cultural, educational, and family-oriented park, having considered the same, reports favorably thereon and recommends that the bill do pass.

I. PURPOSE

The purpose of H.R. 1508 is to transfer title of Heritage Island and portions of Kingman Island, location within the Anacostia River, from the National Park Service to the District of Columbia to facilitate the development of a park and free playground.

II. BACKGROUND

The islands were created in 1916 by the U.S. Army Corps of Engineers as part of a reclamation project for improving the flow of the Anacostia River. The property is under the control of the Department of Interior as part of Anacostia Park. In 1968 the National Park Service (NPS) proposed developing this area as a recreation center similar to Tivoli Garden in Copenhagen, but the project did not move forward.

In 1975, the District of Columbia (DC) government proposed a park on these islands as recommended by the City's Bicentennial Commission. The plan was approved by the National Capital Planning Commission (NCPC). The National Park Service and the District of Columbia then entered into a Memoranda of Agreement authorizing DC to establish, construct, operate, and maintain a chil-

dren's park on Kingman and Heritage Islands using grants, local revenues, and private donations. The approved plans reflected the basic concept of an innovative, natural playground with some paid attractions to cover operating costs. Sufficient funds to complete the work never materialized.

In 1981, the District government asked National Children's Island, Inc. (NCI), the non-profit organization created to implement the Bicentennial park plan to present a new proposal that would not require additional funds from the City, but instead be developed using private capital.

Since that time NCI has been working with the District government and the National Park Service to develop a plan that would meet all objectives.

By 1992 the combination of regulatory and approval processes between the NPS and DC were deemed too cumbersome, and the Park Service agreed to a transfer of jurisdiction to allow DC to manage the project without day-to-day oversight by the NPS.

On November 30, 1992, the NPS transmitted the transfer of jurisdiction proposal including the plat restrictions to the NCPC. On January 7, 1993, the NCPC approved the transfer of jurisdiction. The plat restrictions were a vital element in obtaining approval of the transfer of jurisdiction. It was through the plat that the NPS and NCPC set specific parameters to control development and ensure that an appropriate park environment, similar in density to that envisioned in the 1975 approved plan, would result.

Plat restrictions controlled the height and square footage of structures and payment, and included the requirement for the simultaneous opening of a free playground for children.

On July 13, 1993, the D.C. Council approved the transfer of jurisdiction and passed the Children's Island Development Plan Act of 1993 (D.C. Law 10-57). The transfer plat provided that by July 13, 1996, all approvals be obtained and ground broken, or the land automatically reverted to the NPS.

It is evident that the project will not obtain all the necessary approvals by July of this year. This has led the District of Columbia to request the transfer of title in order to provide the District with autonomy in carrying out the recreational park development of the islands.

III. SECTION-BY-SECTION ANALYSIS

Section 1. Short title

The short title of the bill is the "National Children's Island Act of 1995".

Section 2. Definitions

This section provides eight definitions for the bill.

Section 3. Property transfer

This section outlines the terms and conditions for the transfer of title to Heritage Island and portions of Kingman Island from the Secretary of Interior to the government of the District of Columbia.

Subsection (a) provides that the Secretary shall transfer fee title of the lands to the District of Columbia.

Subsection (b) provides that the Secretary of the Interior shall grant any necessary utility coordinator easements across Federal lands to carry out this project.

Subsection (c) provides that the development shall proceed as outlined in the transfer of jurisdiction plat, but it does not limit the District's authority to make alterations as the project proceeds as long as such modifications are consistent with the plat restrictions.

Subsection (d) sets forth that the transfer of title is subject to the condition that the lands only be used for the stated purpose of a National Children's Island and provides for reversion of the lands to the United States if the Secretary of the Interior determines the terms of transfer have been violated. This subsection outlines the tests which will be considered in the determination of a reversion by the Secretary, but specifies that time periods as set forth in these tests shall be extended during the pendency of any lawsuit which seeks to enjoin the development or operations of the islands or the administrative process leading to such development or operation. In the event of a reversion, the District shall be responsible for any claims and judgments arising during the period for which the District held title to the property, and shall ensure that any nongovernmental entity authorized to carry out and operate National Children's Island shall post necessary bonds to provide for restoration of the island in the event of reversion.

Section 4. Provisions relating to lands transferred and easements granted

This section sets forth a number of other provisions relating to the land transfer.

Subsection (a) requires that a free public playground be established and opened at the same time that any recreation park is opened to the public.

Subsection (b) prohibits public parking on the Islands with limited exceptions.

Subsection (c) requires that before construction commences, final design plans are subject to review and approval of the National Capital Planning Commission and the District of Columbia in accordance with the Children's Island Development Plan Act of 1993, and specifically states that the District of Columbia shall carry out its review of this project in full compliance with all applicable provisions of the National Environmental Policy Act.

Section 5. Effect of property transfer

This section clarifies that the transfer of this property voids the 1993 transfer of jurisdiction from the NPS to the District, except for references to plat restrictions; and removes this property from Anacostia Park.

Subsection (b) authorizes the use of lands currently leased by the United States to the District for parking facilities and other necessary and appropriate functions in support of National Children's Island.

Section 6. Savings provision

This section clarifies that the Act is (1) not intended as a congressional endorsement of the National Children's Island project;

(2) is not intended to exempt the project from environmental, health and safety laws; and (3) does not preclude additional conditions on the development or operation of the project.

IV. DISCUSSION

The property to be transferred is Heritage Island and the portion of Kingman Island that extends south of the Benning Road Bridge. Both are located in the Anacostia River, adjacent to RFK Memorial Stadium. The portion of Kingman Island not part of the transfer is north of the Benning Road Bridge and is developed as part of Langston Golf Course.

The current proposal of the District of Columbia for these islands is to be converted into a safe and accessible landscaped park. This conforms with the longstanding view of the National Park Service and the National Capital Planning Commission for the establishment of an active recreation center on this site as part of its comprehensive plan for the Nation's Capital.

Development of these islands is also consistent with the newly released NCPC "Monumental Core" plan which envisions Washington in the 21st century to: "Convert the area around RFK Stadium into a new eastern gateway to Washington, featuring museums, parks and educational centers."

Congress has taken no role in discussions surrounding the future utilization of federal lands adjacent to Heritage and Kingman Islands. However, speculation has begun as to the future of the area and RFK Stadium in light of the impending move of the Washington Redskins to a new stadium under construction in Maryland.

Public Law 99-581, October 29, 1986, conveyed title to RFK Stadium to the District of Columbia and leased the underlying land and parking lots to DC for 50 years without consideration. The proposed legislation does not alter the nature of this relationship. However, the Mayor is given discretion to authorize use of these leased lands for parking and other facilities deemed necessary in support of National Children's Island.

As outlined previously, these islands have been under the control of DC for the past twenty years. As described by the National Park System Service: "The present condition of these islands is not park-like. There are overgrown areas, piles of debris such as composting leaves and tree stumps, and ramshackle structures from DC's earlier failed attempts to develop these islands. Over the years, National Guard exercises and unpermitted police disposal of incendiary devices have also occurred here."

The National Park Service has supported the efforts of the District to transform these islands and invested a great deal of time, energy and effort in crafting the terms of development outlined in the 1993 transfer of jurisdiction plat. According to these terms, when the entire park project is complete, 90 percent of the land will be in the form of accessible, landscaped open space; a free playground will take up 30 percent of the property; and structures in the educational and recreational park will cover no more than about 10 percent of the total land area.

On May 18, 1995, Denis P. Galvin, Associate Director, Planning and Development, National Park Service, testified before the House of Representatives Subcommittee on National Parks, Forests and

Lands, in opposition to H.R. 1508 unless the bill was “amended to conform to the development, planning, and reverter conditions contained on the plat * * *.” He stated further, “Since the National Children’s Island was only a concept, the transfer of jurisdiction included specific parameters to control development and ensure that a park environment would result.”

The House of Representatives did amend the bill to incorporate the restrictions on development as proposed by the National Park Service. This is found in Section 3(c) of H.R. 1508 which states: “The development of National Children’s Island shall proceed as specified in paragraph 3 of the legend on the plat or as otherwise authorized by the District by agreement, lease, resolution, appropriate executive action, or otherwise.”

In order to provide a more complete understanding of this provision, following is the text of paragraph 3 of the plat referenced in Section 3(c) of the bill:

(3) Development of the Recreation Park shall only occur within the following design parameters:

(a) buildings or structures shall not exceed 50 feet in height, measured from the lowest point on the natural ground level from which the building or structure rises to the building roof line or top of the structure.

(b) buildings footprints shall not exceed more than 5 acres of the Recreation Park in area; and

(c) paved surfaces, including paved areas occupied by structures, but not including areas occupied by buildings, shall not exceed more than 23 percent of the Recreation Park.

It is noted that the section of the bill specifying compliance with paragraph 3 of the plat includes language, “or as otherwise authorized by the District * * *.” This should not be construed to mean that the plat restrictions can be summarily rejected or overruled by the District. Rather, it is intended to give the District flexibility in making adjustments to a final design plan. The plat restrictions set the parameters within which the final design plan must fall.

It is also instructive to note that in a letter dated April 17, 1996, D.C. Delegate Norton, as the original sponsor of H.R. 1508, wrote to Senate Governmental Affairs Committee Chairman Ted Stevens that several valid concerns had been raised with the bill as introduced, and they were addressed at her request in the House Committee amendment in the nature of a substitute. This included, “A provision requiring National Children’s Island to comply with previously agreed upon design parameters. Specifically, buildings cannot exceed fifty feet in height, and no more than five acres can be under roof and no more than 23% of the surface can be paved.” This further clarifies that both the House of Representatives and the Senate agree that the design parameters are those incorporated in the earlier transfer of jurisdiction plat.

Before any work is started on the site, DC must comply with all applicable Federal and DC environmental and planning laws and regulations. At present, placing a recreation park on this property is only a proposal. Information obtained through the public, environmental and planning processes will determine what the actual

design of the development, as permitted by the transfer plat, will be.

While the government of the District of Columbia strongly supports moving forward with development of these islands, the Committee was contacted by a number of individuals and organizations who expressed their opposition to this project. Their concerns centered on the disruption to the residential neighborhoods of a project intended to attract visitors from outside the community, as well as the environmental impact on the Anacostia River.

In 1993, a suit was filed challenging the Secretary of Interior's authority to transfer lands absent an Environmental Impact Statement. The suit prevailed. Opponents of this legislation argue that it makes the court action moot. However, the legislation does not waive compliance with the National Environmental Policy Act. D.C. Law 10-57 also requires that, in addition to all other requirements for approvals, permits and procedures which are necessary, a development plan for Children's Island must be prepared and submitted to the D.C. Council for review and approval; and this development plan by law must include an environmental impact statement.

The Committee is aware of the 1995 District of Columbia Municipal Regulations covering Ward 6 Planning and Development to "Prevent commercial development of Kingman Island (Children's Island) to avoid adverse effects on neighborhoods; island and adjacent park areas to be improved for community and city-wide recreation use. It shall not be used for stadium or stadium-related purposes." This provision does not oppose the development of a recreational or educational park on the islands. It restates the need to avoid adverse effects on the neighborhoods, supports the recreational purpose, and appears to be in response to proposals under discussion in 1994 to expand and build a new stadium. The new stadium plan would have encroached on the long-planned goal of developing the islands for recreational purposes.

It is anticipated that the District of Columbia will hear and consider all concerns relative to a development plan through its local planning and review process. It is not the role of Congress to usurp the decision-making processes of the local government. As stated clearly in the legislation, Congress is not endorsing or approving any construction, development, or operation of these islands.

It is incumbent upon the mayor, the D.C. Council, and the National Capital Planning Commission to give consideration to all views before reaching a conclusion on any final plan for National Children's Island. The process should encourage a comprehensive review that includes hearing from the residents in the affected communities.

In addition, Congress is not taking a position on any business transactions entered into by the District of Columbia. Neither the National Park Service nor the Congress conducted studies on the commercial feasibility or economic viability of the project. It is recommended that before making final commitments, the District of Columbia should consider any financial burdens of a project, such as infrastructure and other associated costs. The D.C. Financial Control Board should also be consulted.

A lack of sustained interest in this project and sporadic financing problems have plagued this project in various forms since it was first proposed.

Eliminating a duplicative layer of management and accompanying paperwork is intended to streamline the process and avoid additional delays. As to whether the transfer of jurisdiction arrangement was unable to address the previous delays of this project, we will be able to gauge only if, and when the project is completed.

V. LEGISLATIVE HISTORY

H.R. 1508 was introduced on April 18, 1995 by D.C. Delegate Eleanor Holmes Norton. A hearing was held on May 18, 1995 by the Subcommittee on National Parks, Forests and Lands of the Committee on Resources, House of Representatives. On October 17, 1995, the bill was considered by the House Committee on Resources and ordered favorably reported as amended in the nature of a substitute. The bill was passed by the House of Representatives under Suspension of the Rules on October 30, 1995, by voice vote. It was received in the Senate and referred to the Committee on Governmental Affairs. No hearing was held. On April 18, 1996, with a quorum present, the Governmental Affairs Committee by unanimous voice vote ordered the bill favorably reported.

VI. ESTIMATED COST LEGISLATION

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 24, 1996.

Hon. TED STEVENS,
Chairman, Committee on Governmental Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 1508, the National Children's Act of 1995, as ordered reported by the Committee on Governmental Affairs on April 18, 1996. CBO estimates that H.R. 1508 would result in no significant cost to the federal government.

H.R. 1508 would require the federal government to transfer, without compensation, title to certain property and easements to the District of Columbia to facilitate the construction of the proposed National Children's Island, a recreational park and playground approved by the District of Columbia under the Children's Island Development Plan Act of 1993. The bill would require the Department of the Interior (DOI) to make the transfer within six months of enactment.

In addition, H.R. 1508 would provide for transferring the property back to the federal government if development or operation fails to meet specified timetables, if the park ceases activity for a period of two years, or if the property is converted to a use that is not authorized by the bill. If ownership of the property reverts to the federal government, it would be held harmless against any claims or judgments that arose while the District of Columbia held title. The bill also would require that any developer or operator establish an escrow fund, post a surety bond, or provide a letter of

credit sufficient to return the property to a condition suitable for use by the National Park Service.

The property that would be conveyed under this bill is neither generating income today nor likely to generate income in the future. Thus, CBO estimates that the transfer would result in no loss of receipts to the federal government. We also estimate that DOI would not incur any significant costs in conducting the transfer.

Under the bill, DOI could seek reimbursement from the District of Columbia for any actual, unbudgeted costs incurred in transferring the property. DOI would then have the authority to spend these funds without further action by appropriations. Based on information provided by DOI, however, CBO expects that no reimbursement would occur under H.R. 1508.

H.R. 1508 contains no intergovernmental or private sector mandates as defined in Public Law 104–4. The District of Columbia would incur some minimal costs primarily to review and approve plans for the Children’s Island project, but such costs would result from voluntary participation in the project.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are John R. Righter, and for the local government impact, Theresa Gullo.

Sincerely,

JAMES L. BLUM
(For June E. O’Neill, *Director*).

VII. REGULATORY IMPACT

Paragraph 11(b)(1) of Rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill evaluate “the regulatory impact which would be incurred in carrying out the bill.”

The enactment of this legislation would not have a significant regulatory impact on the public, nor would it constitute an undue regulatory burden on the National Park Service or the Department of the Interior.

VIII. CHANGES TO EXISTING LAW

If enacted, H.R. 1508 would make no changes to existing law.

